IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.387 OF 2006

Vinod Jankiprasad Sharma Petitioner

versus

Mrs.Meena Vinod Sharma & anr. Respondents

Mr.K.H.Giri for petitioner.

CORAM : S.C.DHARMADHIKARI, J.

DATE : 1st February 2006

PC :

1. The petitioner by this writ petition under Article 227 of the Constitution of India challenges an order of interim maintenance passed by learned Civil Judge, Senior Division, Kalyan in Marriage Petition No.181 of 2003.

2. The petitioner has contended that the above matrimonial petition was filed in which an application was made for interim maintenance. The petitioner filed a reply thereto and apart from other contentions, urged that the first respondent-wife is practicing as an Advocate. He

also urged that as far as his profession is concerned he is not permitted to practice because his qualifications are not recognised.

3. The application for maintenance was granted and as against a claim of Rs.10,000/-, Rs.5,000/- per month have been awarded to the first respondent from the date of application and costs of Rs.2,000/-.

4. The petitioner applied for a review of this order and the revision/modification application has also been rejected by the Trial Court on 3rd March 2005.

5. The only contention raised by the petitioner's counsel is that the first respondent simultaneously filed an application on 5th March 2003 under section 125 of Code of Criminal Procedure claiming maintenance from the petitioner and there also an order has been passed awarding a sum of Rs.1,000/-. It is also not disputed by the learned counsel that a revision application to challenge this order has been rejected by learned Sessions Judge. An application to challenge that order has been rejected in this Court in default.

6. Now, on the own showing of learned counsel the proceedings for execution and enforcement of the order, have been initiated by the first respondent-wife. An attachment order has been passed.

7. When this matter was placed before me yesterday, I called upon the petitioner’s counsel to take instructions as to whether the petitioner is agreeable to deposit the sum and show his bona fides in the matter. Admittedly, from the date of the order passed on the interim maintenance application, the petitioner has not paid anything to the first respondent-wife. All that the learned counsel would urge is that the first respondent-wife has been paid some amount pursuant to the orders passed on the application preferred by her u/s 125 of Cr.P.C..

8. In my view, the Court below is in no error in rejecting the contentions of the petitioner. The Court below has applied it’s mind to the materials produced and at a prima facie stage, considering the pleas raised in the application for interim maintenance by the first respondent-wife, has passed an order in her

favour. There is no need to interfere with these prima facie findings of fact in my limited jurisdiction under Article 227 of the Constitution of India.

9. Petition dismissed.

10. Reliance placed on the decision of the Hon’ble Supreme Court in the case of Sudip Chaudhary Vs. Radha Chaudhary reported in AIR-1989-SC-536 cannot be of any assistance of the petitioner at this stage. If the petitioner has paid amounts under the order passed by the JMFC, he can claim adjustments, provided, he has intentions to honour the order of interim maintenance passed by learned Civil Judge. It would be open for the petitioner to urge after paying the amount as awarded or at least after a substantial deposit, that some adjustment be made. Keeping these contentions open for being urged at an appropriate stage, petition is dismissed.

(S.C.DHARMADHIKARI, J.)